

REMARKS

In response to the Official Action of April 15, 2003, Claims 75-84 are cancelled without prejudice whereby all claims, that is Claims 1-84, have been cancelled without prejudice. New Claims 85-104 have been added.

On page 2 of the Official Action, Claims 75-84 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing particularly to point out and distinctly to claim the subject matter which Applicant regards as the invention. In particular, it was stated that in Claim 75, line 1, Applicant claims an "automated apparatus" but that nowhere in the body of the claim nor in the dependent claims does the Applicant claim any elements which highlight or positively claim the automated feature.

Although it is submitted that one skilled in the art would understand that the apparatus was inherently automated, nevertheless the language has been modified whereby "automated" does not appear, as such, in the claims submitted herewith.

Claims were also rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,970,911, of van der Lely, which issued October 26, 1999, and is directed to a construction which includes an accommodation for animals. It was further stated in the Official Action that van der Lely teaches a construction, including an accommodation for animals, that reduces a liquid to a fine spray by rubbing the cow with brushes 44 due to the air/water mixing by rotation of brushes resulting in a liquid atomization device. It was further indicated that the device of van der Lely is positioned in a milking compartment with a robot and the means for determining whether the animal is undergoing thermal stress is the operator operating the equipment. It was still further pointed out the use of cameras in milking parlors is well known and thus deemed to be obvious to a person of ordinary skill in the art at the time the invention

was made because it allows the operator to monitor numerous cows at the same time. Yet further, it was stated that the use of a hydrometer is well known in milking parlors for monitoring the water vapor in the building and that the operator, as such, was considered to be an odor monitor.

In an Official Action dated February 6, 2002, a restriction requirement was imposed wherein claims of Groups I and II were directed to method claims and Group III Claims were drawn to a device for cooling animals. The restriction requirement was traversed and a provisional election was made to the Group III claims. Although the inventors continue to object to the restriction requirement, in order to facilitate prosecution of the Application, the claims submitted herewith are directed to the Group III invention. It will be understood that the inventive subject matter of Groups I and II may be continued, if desired, by further divisional or other continuing patent applications.

The van der Lely reference, U.S. Patent No. 5,970,911, hereinafter referred to as reference '911, relates to an accommodation for animals such as cows wherein the animals are massaged and brushed while in the milking compartment so that the animals feel at ease and, as a result, milk production may be increased and the percentage of diseases of the animals may be reduced. In addition, the skin of the animal is maintained in a clean state by the brushing. In a cold season, air, water or oil may be supplied automatically during any massaging or brushing or both. Reference '911 essentially shows three different massage elements or members. First, a massage element 21 is shown in detail in Figures 3 and 4 and comprises a square massage plate 23 made of flexible material such as rubber or synthetic material. It is further provided with a spraying device 26 by means of which warm or cold air, water or oil, can be supplied to massage element 21. The spraying device 26 comprises a spraying nozzle 27 disposed in the center of

massage plate 23. Via a line 28 disposed in arm 17, warm or cold air, water or oil can be supplied to spray nozzle 27.

As shown in Figures 1 and 2 of reference '911, a brushing member generally designated by reference numeral 30 is movable in a longitudinal direction by guide means disposed on the frames of the compartment. A second massaging means is obtained via motor driven brush 44 which is capable of being driven in opposite directions at a variable rpm and can be moved along the trunk of the animal from the position shown in bold lines in Figure 2 until pivoted into the schematically shown position indicated by dot-dash lines which illustrate a further means for massaging an animal in the milking compartment.

The pivoted position of brushes 44 as shown in Figure 2 thus constitutes the third massaging means whereby the back of the animal may be massaged. This massaging occurs, however, with the longitudinal axes of the brushes being parallel to the longitudinal position of the animal in the milking compartment as well as to the longitudinal disposition of the milking compartment.

From the above discussion, it will be appreciated that brush 44 is not connected to means for receiving warm or cold air, water or oil as is the case with massage element 21 that is made of a flexible material such as rubber or synthetic material. Indeed, the purpose, as set forth in reference '911 is essentially to massage the animal in the milking compartment. In contrast, the instant invention is directed to cooling such animal. This purpose is set forth more clearly, it is submitted, in the claims set forth herein. Thus it will be noted that in Claim 85 the cooling means comprises a plurality of nozzles and the spray of atomized water is directed substantially to the back only of the animal in the milking compartment. Accordingly, the instant inventor aims to relieve the animal of that stress while, at the same time, avoiding water dripping into the

area where the animal's udder and teats are located. The instant inventors therefore provide for cooling an animal that needs cooling because it may be in heat stress while, at the same time, avoiding the possibility that cooling water may drip down from the animal possibly being received in the teat cups (which are under partial vacuum) to be drawn into and mixed with the milk which the animal is producing.

Claim 98 submitted herein is directed more nearly to the second embodiment of the invention that includes water being provided to the brushes. Claim 98, nevertheless, falls within the ambit of the Group III claims which have been elected in view of the prior restriction requirement.

It will be appreciated that all of the claims, in one form or another, are directed to the concept of effectively cooling an animal that produces milk in a manner to avoid the cooling water from mixing with the milk. The water spray is confined to the back of the animal, not the sides or the rear where it may somehow drip into the animals udder and teat area. The means of detecting the animal is in thermal stress may be a camera, hydrometer or an odor meter. It may also be by other means as set forth in the Application, but these three sensors are recited specifically in the claims.

In view of the foregoing, it should be clear beyond peradventure that the claims in the instant Application are directed to and define an invention different than that of reference '911.

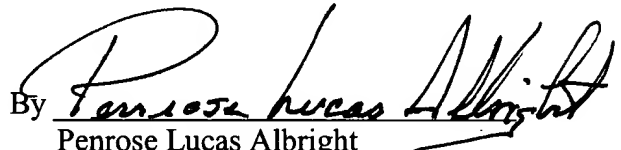
With this Amendment, twenty (20) new claims are being presented, three (3) of which are independent claims. As such, it does not appear that a further fee based on the number of claims is necessary and therefore it is not included in the check provided herewith for other purposes. However, if in error, the Commissioner of Patents and Trademarks is authorized to debit our Account No. 13-2000 as appropriate.

Further consideration and reexamination of this Application, in its amended form, is requested in view of 35 U.S.C. §132 and regulations in implementation thereof. It is submitted the Application in its amended form is free from ambiguity and avoids the references of record. It is further submitted the Examiner should have no difficulty in finding that the differences between the subject matter sought to be patented in this Application and prior art and usage within the Examiner's expert knowledge are such that the subject matter as a whole would not have been obvious at the time the invention was made to persons having ordinary skill in the art to which the subject matter of this Application pertains.

In view of the foregoing, the allowance of claims as now presented is earnestly solicited.

Respectfully submitted,

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